

Hariom Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-21-2006

Reported in : 2006(1)MPLJ533

Judge : Rakesh Saxena, J.

Appeal No. : Criminal Revision No. 331/2006

Appellant : Hariom

Respondent : State of Madhya Pradesh

Judgement :

ORDER

Rakesh Saxena, J.

1. Applicant has filed this revision against the order dated 20-12-2005, passed by II Additional Sessions Judge, Sagar, in Sessions Trial No. 316/05, framing the charge against him under Section 306 of IPC.
2. Learned Counsel for the applicant submits that there is absolutely no material on record for making out charge under Section 306 of IPC.
3. In brief, the prosecution story is that in the night between 19th and 20th February, 2005, at about 1.30 o'clock, applicant entered the house of Pushpa (deceased) with a view to outrage her modesty. Hearing noise, Hemant and of her

persons reached there, whereupon, applicant ran away from the room. Hemant assaulted applicant by means of lathi. Next morning i.e., about 8.00 a.m. on 20-2-2005, Pushpa committed suicide by hanging in her room. A merger report was lodged by Ambika Prasad, the grand father of Pushpa. On post-mortem examination of the dead body, it was opined that Pushpa had died by hanging.

4. During investigation, statements of Balram, Shri Bai (mother of deceased), Ram Swaroop (father of deceased), Hemant (brother of deceased), Brajesh Kumar (uncle) and Ambika Prasad were recorded. In the statements of Hemant, Brajesh Kumar and Balram, it was disclosed that applicant entered the room of the deceased in the night and on being detected escaped from there. Hemant inflicted two lathi blows to him. In the next day morning Pushpa committed suicide by hanging, feeling ashamed and defamed by the conduct of applicant.

5. After investigation, police filed the charge-sheet.

6. Learned Additional Sessions Judge, by the impugned order, finding prima facie case of abetment of suicide by the applicant, framed the charge under Section 306 of IPC against him.

7. Learned Counsel for the applicant submits that from the material and the evidence on record, prima facie, no ingredients of the offence under Section 306 of IPC are made out. He submits that there is no evidence or allegation that applicant in any manner abetted or incited the deceased to commit suicide, as such, framing of the charge against him for the offence under Section 306 of IPC is illegal and deserves to be set aside.

8. Learned Counsel for the State, on the other hand, submits that there is evidence on record to establish that the applicant had entered the house of deceased in the night. Feeling greatly humiliated and insulted, deceased committed suicide. According to her, the conduct of the applicant compelled the deceased to commit suicide, therefore, the Trial Court did not commit any error in framing (the charge under Section 306 of IPC).

9. On perusal of the evidence of all the prosecution witnesses, it is apparent that there is no direct evidence to indicate that applicant had in any manner incited, provoked or compelled the deceased to commit suicide. Though, from the allegations made in the statements of witnesses, it appears that she committed suicide because of shame and frustration that applicant entered her room in the night, but, this by itself is not sufficient to hold prima facie that the applicant in any manner intended that the deceased should commit suicide.

10. For framing charge under Section 306 of IPC, it is necessary that there should be material to indicate that accused has abetted the deceased to commit suicide. Section 306 of Indian Penal Code reads as under:

Section 306. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment has been defined in Sections 107 and 109 of Indian Penal Code, which read as under:

Section 107. A person abets the doing of a thing, who-

First. - Instigates any person to do that thing; or

Secondly. - Engages with one or more of her person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof is said to aid the doing of that act.

Section 109 of the Indian Penal Code provides for punishment of abetment which reads as under:

Section 109. - Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

11. Section 306 of Indian Penal Code makes abetment of the commission of suicide punishable, therefore, making liable for an offence punishable under Section 306 of Indian Penal Code, it is a duty of the prosecution to establish that such person has abetted the commission of suicide and for the purpose of determining the act of accused it is necessary to see that his act must fall in any of the three categories as enumerated under Section 107 of the Indian Penal Code. It is necessary to prove that the said accused instigated the person to commit suicide or engaged himself with one or more of her persons in any conspiracy for seeing that the deceased commits suicide.

12. On due consideration of the facts of present case, it becomes abundantly clear that there is no direct or indirect connection between the act of applicant and the act of deceased of commission of suicide. Applicant is said to have entered the house in the night, but the deceased hanged herself in the morning at about 8.00 a.m. It appears that under great stress and depression and feeling ashamed by the conduct of applicant, she committed suicide. Apparently, the charge under Section 306 of IPC is not sustainable against applicant merely on the ground that deceased felt ashamed by the said conduct of accused.

13. Even on accepting the prosecution evidence in its entirety and as a whole, prima facie, no ingredients constituting the offence under Section 306 of IPC are made out. However, there is material on record to indicate that applicant had entered the house of complainant in the night. The act of entering the house in the night, without permission and consent of the complainant amounts to an offence under Section 451 of IPC.

14. In the facts and circumstances of the case, for the foregoing reasons, I am of the opinion that the impugned order framing charge against the applicant for the offence under Section 306 of IPC deserves to be set aside. Accordingly, the order framing charge under Section 306 of IPC is set aside. However, the learned Trial

Court is directed to frame the charge under Section 451 of IPC and to proceed according to law.

15. Revision partly allowed.

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